

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 THE PHILLIES, a)
4 Pennsylvania limited)
5 partnership,)
6 Plaintiff,)
7 -vs-) Civil Action No.
8 HARRISON/ERICKSON,) 19-7239-VM-SN
9 INCORPORATED, a New York)
10 corporation, HARRISON)
11 ERICKSON, a partnership,)
12 and WAYDE HARRISON and)
13 BONNIE ERICKSON,)
14 Defendants.)

15 DUANE MORRIS LLP
16 30 SOUTH 17TH STREET
17 PHILADELPHIA, PENNSYLVANIA 19103
18 FEBRUARY 13, 2020
19 9:18 A.M.

20 *****CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER*****

21
22
23 VIDEOTAPED DEPOSITION OF
24 THOMAS ANDREW BURGOYNE

25 REPORTED BY:

26 DEBRA SAPIO LYONS, RDR, CRR, CRC, CCR, CLR, CPE
27 JOB NO. 176994

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February 13, 2020

Videotaped deposition of Thomas Andrew Burgoyne,

held at the offices of Duane Morris LLP, 30 South
17th Street, Philadelphia, Pennsylvania 19103,

before Debra Sapiro Lyons, a Registered Diplomat

Reporter, a Certified Realtime Reporter, a

Certified Realtime Captioner, a Certified

LiveNote Reporter, an Approved Reporter of the

United States District Court for the Eastern

District of Pennsylvania, a Certified Court

Reporter of the State of New Jersey, a Notary

Public of the States of New Jersey, New York and

the Commonwealth of Pennsylvania.

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2 drawing of this or the design of it?

3 A. His name is Tom Sapp.

4 Q. And using the -- the images on
5 Exhibit 7, what are the changes to the
6 Phanatic that you were mentioning?

7 A. Well, his hat is bigger. The blue
8 eye -- bushy eyebrows are powder blue. The
9 eye -- eyelash -- eyelashes, I guess, are now
10 star-shaped and a lighter pink. The snout is
11 shorter and cylindrical. The eyes are
12 actually round. The white of the eyes are
13 round. I know in that middle illustration it
14 looks like it's oval, but they're actually
15 round. And the pupils are oval, black pupils.

22 And he has red shoes. And instead
23 of a star, we're going with a Liberty Bell
24 logo on his shoe.

25 Q. So you're saying even though in

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2 MR. WILLIAMS: If we could take a
3 quick break.4 THE VIDEOGRAPHER: We are going off
5 the record at 11:17.6 (A recess is held from 11:18 a.m. to
7 11:32 a.m.)8 THE VIDEOGRAPHER: We are back on
9 the record at 11:31.

10 BY MR. WILLIAMS:

11 Q. Mr. Burgoyne, in the case the
12 parties have collected and exchanged a bunch
13 of documents related to the Phanatic.14 Did you personally collect any
15 documents to provide for the case?16 A. Personally collect? How do you
17 mean?18 Q. Did you -- well, let me start
19 here.20 Do you store documents about your
21 job on a hard drive at work?22 A. About my job? Not -- I'm trying
23 to think of things that I have in writing --

24 Q. Sure.

25 A. -- that would be stored on my

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2 computer that relates to the job.

6 Q. Yeah, that's -- I'm just --

7 A. Yeah.

8 Q. -- trying to find out what your --

9 A. Yeah.

10 Q. -- practices are like and then
11 I'll try to do follow-up questions if I -- if
12 I need to --

13 A. Yeah.

14 Q. -- but I'm just trying to -- I
15 assume you exchange e-mails with people about
16 work.

17 A. Yes.

18 Q. Is the e-mail account we
19 referenced earlier today the only work-related
20 account that you have?

21 A. Yes.

22 Q. And did you provide anyone with
23 access to that account so that they could
24 collect documents for this litigation?

25 A. No.

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2 Q. Did you, yourself, look through
3 your e-mails to try to provide any documents
4 for this litigation?

5 A. Not that I can recall.

6 Q. And you said you don't store a lot
7 on your hard drive I'll call it. Do you have
8 a personal computer in your office?

9 A. I do, yes.

10 Q. And this is your work office?

11 A. Yes.

12 Q. And did you look on that machine
13 to see if there are any documents relevant to
14 this litigation?

15 A. Not that I can recall, no. I --
16 generally I don't keep a lot of paperwork.
17 I'm -- my job, you know, pretty much is the --
18 the creative end of the Phanatic, the
19 performer inside the costume. So a lot of the
20 files and documentation over the years, you
21 know, I -- I have some, but nothing that I can
22 think of certainly in terms of, you know, this
23 litigation. I'm not a great record keeper I
24 guess is what I'm trying to say.

25 Q. Okay. Do you have hard copy files

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2 in your office at work?

3 A. Some, uh-huh. Yep.

4 Q. And do you know whether those were
5 reviewed for the purpose of collecting
6 documents in this case?

7 A. No, yeah, I don't -- I don't
8 recall looking at any documents in my one --
9 my -- I have a filing cabinet that I keep, you
10 know, various things over the years, but I
11 don't recall looking at any of that in
12 preparation for the litigation, no, or
13 pertaining to the litigation.

14 Q. And did anyone else, to your
15 knowledge, review any of those files?

16 A. No.

17 Q. Okay. Do The Phillies use a
18 document management system to store documents?

19 A. Like what?

20 Q. Sure. So, for example, our firm
21 uses something called iManage. There's one
22 called Worldox. It's basically a cloud-based
23 kind of way of storing things so that stuff
24 isn't on your individual machines.

25 Does -- do The Phillies use

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2 anything like that?

3 A. I'm not quite sure. I know
4 there's the iCloud and I know I've stored -- I
5 generally use -- when I store a document, I do
6 it on my -- my computer 'cause I'm not quite
7 sure how the whole iCloud thing works.

8 Q. Okay.

9 A. Try to keep it simple.

10 Q. And when you're referring to
11 "iCloud," is that an Apple-based storage
12 system?

13 A. I think so.

14 Q. Okay.

15 A. If you say so.

16 Q. Do you -- is it your understanding
17 that's how other people within the
18 organization store documents, in iCloud?

19 MR. WOLFSOHN: Objection, lack of
20 foundation.

21 THE WITNESS: Yeah, I don't know how
22 people store their documents.

23 BY MR. WILLIAMS:

24 Q. Okay. But that's an option on the
25 computer that you use at work?

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2 A. Yeah, I -- yes.

3 Q. Okay. Do you know -- have you
4 ever seen the document request that we
5 provided to The Phillies in this litigation?

6 A. No.

7 Q. Okay. So you haven't seen a
8 document that lists -- prepared by our firm
9 that lists out the types of documents that we
10 want produced in the case?

11 A. Not that I recall, no.

12 Q. Okay.

13 (Counsel confer.)

14 Q. When we were discussing earlier
15 this project of making some changes to the
16 Phanatic and the potential rollout of this new
17 costume that you described, are there specific
18 merchandise items planned for release that
19 reflect those changes?

20 A. We have talked about the
21 possibility of having merchandise available
22 when the Phanatic -- yeah, when the changes
23 are made, yeah. Specifically nothing that I
24 can think of.

25 Q. Okay.